vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.544 OF 2005
IN
NOTICE OF MOTION NO.986 OF 2004
IN
SUIT NO.847 OF 2003

M/s.Patson Constructions & Anr. ... Plaintiffs

V/s.

Gagangiri Premises Co-op
Society Ltd. & Ors. ... Defendants

Mr.Baptist D'souza for Plaintiffs
Ms.Hira Kranti i/b Prakash G. Lad for Defendant Nos.3 to 6 and 8

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 15, 2006**

P.C.:

. This Notice of Motion has been taken out for setting aside the order passed by this Court on 11.2.2005 dismissing the Motion. It appears that nobody appeared for the Plaintiff, either on 10.2.2005 or on 11.2.2005 when the matter was called out and dismissed for default. An affidavit has been filed stating that the Defendant's Counsel was not able to remain present in Court when the matter was called out. Although he rushed to the court the matter had already been dismissed for default.

2. There is no explanation as to why the Advocate on record was not present when the matter was dismissed. However, a statement is made across the bar that due to personal reasons, he was not able to remain present on that day and he had therefore, appointed a Counsel to

appear on his behalf.

3. Although the reason for remaining absent on 11.2.2005 does not appear to be genuine, I am of the view that the litigant should not suffer due to the default of the advocate.

4. Notice of Motion No.986 of 2004 restored to file on condition of payment of costs of Rs.5,000/- to the Maharashtra State Legal Services Authority.

5. Motion is disposed of accordingly.